

PT 95-59
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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DECATUR MASONIC TEMPLE      )   Docket No.(s)  92-58-71  
ASSOCIATION                 )  
                             )   Applicant  
                             )   PI No.   04-12-15-235-006  
                             )   (Macon County)  
v.                           )  
                             )  
THE DEPARTMENT OF REVENUE    )   George H. Nafziger  
OF THE STATE OF ILLINOIS     )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Harold F. Tenney, appeared on behalf of the Decatur Masonic Temple Association (hereinafter referred to as the "Applicant").

SYNOPSIS: The hearing in this matter was held at 101 West Jefferson Street, Springfield, Illinois, on July 8, 1994, to determine whether or not Macon County parcel No. 04-12-15-235-006 and the building and parking lot thereon, should be exempt from real estate tax for the 1992 assessment year.

Is the Applicant a charitable organization? Did the Applicant own the parcel here in issue during the 1992 assessment year? Did the Applicant use the parcel here in issue and the building and parking lot thereon, for charitable purposes during the 1992 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that the Applicant is not a charitable organization. It is also determined that the Applicant owned the parcel here in issue and the building and parking lot thereon, during the 1992 assessment year. Finally, it is determined that the Applicant failed to establish that it used the parcel here in issue and the building and parking lot thereon, for

primarily charitable purposes during the 1992 assessment year.

FINDINGS OF FACT: The position of the Illinois Department of Revenue (hereinafter referred to as the "Department"), in this matter, namely that the parcel here in issue and the building and parking lot thereon, did not qualify for exemption during the 1992 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 9C.

Mr. John Campbell, president of the Applicant, and Mr. Jesse W. Angel, Jr., accountant for the Applicant, were present at the hearing, and testified on behalf of the Applicant.

On December 3, 1992, the Macon County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning the parcel here in issue and the building and parking lot thereon, for the 1992 assessment year, to the Department (Dept. Ex. No. 2). On July 9, 1993, the Department denied the exemption of this parcel and the building and parking lot thereon, for the 1992 assessment year (Dept. Ex. No. 3). By a letter received on July 27, 1993, the Applicant requested a formal hearing in this matter (Dept. Ex. No. 4). The hearing held in this matter on July 8, 1994, was held pursuant to that request.

The Applicant acquired the parcel here in issue on June 19, 1928. During 1992, this parcel was improved with a two-story building with a full basement, and a paved parking lot containing approximately 160 parking spaces.

During 1992, the first floor of the building contained a large auditorium, Corinthian Hall, two lounges, an office, and a parlor. The area identified as the upper first floor contained a room known as the Lost Room Museum, the DeMolay Lounge, a dressing room, and a storage area. The second floor contained Doric Hall, Ionic Hall, and the library. The basement, during 1992, contained a large dining room, a smaller dining room, a kitchen with an adjacent dining room, and a game room. Corinthian

Hall, Ionic Hall, and Doric Hall, were the lodge rooms which were used by the various Masonic organizations for their regular and special meetings.

The Applicant was incorporated on October 3, 1923, for the following purposes:

- "a. To inculcate, promote and further the interests of Free Masonry in and about the City of Decatur, Illinois.
- b. To foster and develop the spirit of fraternalism among Masons, &
- c. To provide comfort, convenience, recreation and amusement for its members."

On September 16, 1946, the purpose clause of the Articles of Incorporation of the Applicant was amended to read as follows:

- "a. To inculcate, promote and further the interests of Free Masonry in and about the City of Decatur, Illinois.
- b. To foster and develop the spirit of fraternalism among Masons, and
- c. To encourage, foster and promote charitable, benevolent, educational, civic and patriotic activities in the city of Decatur, Illinois, and adjacent communities, (not to include the care of dependent, neglected or delinquent children) and that no gains or profits of the corporation shall enure at any time to any individual or member of the corporation."

On December 10, 1991, the purpose clause of the Articles of Incorporation of the Applicant was amended again, to read in part as follows:

- "1. The Corporation is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).
- 2. The primary purpose of The Decatur Masonic Temple Association, Inc. is to restore and preserve the Decatur Masonic Temple, a structure of historical and architectural significance, in Decatur, Illinois, to operate and maintain the property and to take all lawful actions necessary to accomplish the foregoing purposes."

The purposes of the Applicant, as set forth in its bylaws, read as follows:

- "(a) To own, operate and maintain a building or buildings, and grounds for the use and benefit of the Masonic Lodges of

Decatur, Illinois.

- (b) To inculcate, promote and further the interests of Free Masonry in and about the City of Decatur, Illinois.
- (c) To foster and develop the spirit of fraternalism among Masons."

During 1992, four blue lodges and 10 appendant bodies met in the building on this parcel. The following is a list of those organizations, and the amount of rent each paid to the Applicant. Those organizations met either once a month, or twice a month, during 1992.

Macon Lodge #8 Ancient Free & Accepted Masons	\$ 3,920.00
Ionic Lodge #312 Ancient Free & Accepted Masons	3,984.61
Stephen Decatur Lodge #979 Ancient Free & Accepted Masons	9,645.82
Great Light Lodge #1064 Ancient Free & Accepted Masons	6,510.24
Macon Chapter #21 Royal Arch Masons	1,332.10
Beaumanior Commandery #9 Knights Templar	1,970.00
Decatur Chapter #111 Order of the Eastern Star	2,835.00
Decatur Council #16 Royal & Select Masters	1,303.00
Order of DeMolay	60.00
Job's Daughters	60.00
Leighton Court #1 Order of the Amaranth	857.46
Mecca Shrine #53 White Shrine of Jerusalem	521.46
Zohak Grotto Mystic Order Vested Prophets of the Eastern Realm	602.04
Guiding Light #1016 Order of the Eastern Star	1,096.69
Total	\$34,698.42

During 1992, the Applicant's total income was made up of the following:

Lodge Rentals	\$34,698.42
Dining Room	21,951.96
Ballroom and Auditorium Rental	1,470.00
Parking Fees	11,421.43
	\$69,541.81

During 1992, the Applicant made no contributions to charity.

During 1992, Applicant's parking lot, which is approximately one block from downtown Decatur, was open to the public. Applicant's receipts from the parking lot for 1992, were broken down as follows:

Firstech	\$ 960.00
Gluck's	120.00
Staley Mfg.	277.50
Wagner Casting	33.75
Ill. Power	195.00
1st Methodist Church	500.00
Decatur Celebration	1,440.00
Burtshi	360.00
49 regular monthly	5,880.00
Misc. daily and weekly	1,655.18

Total \$11,421.43

Applicant's after-filed Exhibit 25 is a list of the Applicant's room rental fees during 1992. These fees range from \$50.00 for three hours for a small lounge, up to \$360.00 for three hours for the auditorium. Applicant's after-filed Exhibit 27 is a list of building rentals. This list included rentals to Kelly Food Products, the Decatur Chamber of Commerce, Illinois Power Company, Magna Bank, and Ralph Long Chapter of Credit Union, as well as the First Methodist Church, Decatur Quilters, Boy Scout Leaders, National Theatre, and Macon County Historical Society, among others. The areas of the building which were actually rented out during 1992, included the auditorium, the kitchen, and the various dining rooms. On five occasions, areas of the building were used, at no charge. Those uses included a Halloween party and a Christmas party for Masons, their friends, and the general public. A meeting of retired Staley employees who were associated with a Masonic organization, was also held there. In addition, a Jaycees meeting was held there, and also a Boy Scout leaders' meeting.

The basic Masonic organizations are the so-called "blue lodges". These lodges are the cornerstones of Masonry. During 1992, four blue lodges met in the lodge rooms in the building on this parcel. These four blue lodges included Macon Lodge #8, A.F. & A.M., Ionic Lodge #312, A.F. & A.M. Stephen Decatur Lodge #979, A.F. & A.M., and Great Light Lodge #1064, A.F. & A.M. These organizations awarded three degrees, the first was Entered Apprentice, the second was Fellowcraft, and the third was Master Mason. During 1992, the fees for Ionic Lodge, Stephen Decatur Lodge, and Great Light Lodge, were \$40.00 for the first degree, \$30.00 for the second degree, \$30.00 for the third degree, and the annual dues were \$30.00. During 1992, the fees for Macon Lodge were \$40.00 for the first degree, \$40.00 for the second degree, \$45.00 for the third degree, and the annual

dues were \$30.00. No evidence was offered that initiation fees, or dues, were ever waived, or reduced.

I take Administrative Notice of the decision of the Department, in the matter of Pontiac Masonic Temple, Docket No. 83-53-16, in which it was determined that to be a member of the Commandery, Consistory, Shrine, or other appendant bodies, a man must first be a member of a blue lodge. In that decision, it was also pointed out that the Order of the Eastern Star includes women, but they must be a relative of, or married to, a Mason.

Concerning persons who have applied for membership in the blue lodges which met in the building on this parcel, Mr. John Campbell, president of the Applicant, testified at pages 55 and 56 of the transcript as follows:

"Q. Now, you indicated in talking about the first three degrees of masonry that there was an investigation of the individual and then they were voted on by the Blue Lodge. Does that vote require a unanimous vote of the persons that are present at the Blue Lodge Meeting when that is considered?

A. Yes, it does.

Q. And is that vote taken using a black ball system?

A. Yes, a secret ballot.

Q. And it is done with an actual box with the black balls and white balls?

A. Actual ballot box, yes.

Q. Are there any black members of the four Lodges in Decatur?

A. No.

Q. Is there, in fact, a separate black Masonic system?

A. There is under the Prince Hall Charter of Masons."

During 1992, Stephen Decatur Lodge's charitable contributions were 6.4% of total expenses. Great Light Lodge's charitable contributions were 4.7% of total expenses. Macon Lodge's charitable contributions for 1992, were 13.2% of total expenses. Finally, Ionic Lodge's charitable contributions were 7.3% of total expenses.

The Applicant was also requested to provide statements of income and

expenses for 1992, for the ten appendant Masonic bodies, which met in the building on this parcel, during that year. Applicant actually provided legible financial data for seven of the aforesaid ten appendant bodies. During 1992, the contributions to charity of Macon Chapter 21 of the Royal Arch Masons was 27.6% of total expenditures. Beaumanior Commandery #9 of the Knights Templar contributed 7.7% of its total expenditures to charity. Decatur Council #16, Royal and Select Masters contributed 44.5% of its total expenditures, during 1992, to charity. The Order of DeMolay, during 1992, contributed 49% of its expenditures to charity. The Job's Daughters' contributions to charity, during 1992, were 2.9% of total disbursements. Leighton Court #1 Order of the Amaranth contributed 10.3% of its 1992 total disbursements to charity. Finally, Guiding Light Chapter #1016 of the Order of the Eastern Star contributed 11.7% of its total 1992 disbursements to charity.

1. Based on the foregoing, I find that the Applicant owned the parcel here in issue and the building and parking lot thereon, during the entire 1992 assessment year.

2. I find that the Applicant was organized to promote the fraternalism, comfort, and convenience of Free Masonry.

3. While the purpose clause of the Applicant's Articles of Incorporation changed over the years, its actual purpose remained the same, namely to promote the fraternalism of Free Masonry, by providing a place for the four Decatur blue lodges and ten appendant bodies to meet and engage in their fraternal rituals and activities.

4. I find that the Applicant had no capital, capital stock, or shareholders, and no one profited from the enterprise during 1992.

5. I find that during 1992, the Applicant's sources of income included lodge rentals, dining room fees, ballroom, and auditorium rentals, and parking fees.

6. The Applicant's expenditures, during 1992, were entirely for building upkeep and maintenance.

7. During 1992, the Applicant, I find, made no contributions to charity.

8. During 1992, the Applicant, I find, used the auditorium, kitchen, and dining rooms in the building, on this parcel, for profit.

9. The parking lot on this parcel, I find, was open to the public, and used for profit by the Applicant during 1992.

10. The lodge rooms in the building on this parcel were used during 1992, I find, for the fraternal activities of the four blue lodges and ten appendant bodies.

11. The benefits of Applicant's activities, during 1992, I find, were primarily available to the members of the blue lodges and appendant bodies which met in the building, and which were limited to nonAfro-American men and their families, who could afford to pay the various organizations' initiation fees and dues.

12. While the record includes numerous references to charity, an analysis of the legible financial data provided by the blue lodges and some of the appendant bodies, makes it clear that the expenditures by these organizations for charity were incidental when compared to their expenditures for building, fraternal, and social purposes.

13. Finally, I find that the Applicant, during 1992, used the parcel here in issue and the building and parking lot located thereon, for primarily social and fraternal purposes, as well as leasing them, and otherwise were using them for profit, and only incidentally, for charitable purposes.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the

property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

35 ILCS 205/19.16 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided hereinbefore...and owned by any...charitable institution which meets the qualifications for exemption."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department*, 189 Ill.App.3d 858 (2nd Dist. 1989); *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

In the case of *People ex rel. Thompson v. The Dixon Masonic Building*

Association, 348 Ill. 583 (1932), the Illinois Supreme Court considered a case involving facts similar to those here in issue. In that case, the Supreme Court, at page 596, concluded:

"...but a building used primarily for social or fraternal purposes or for lodge meetings for the conduct of ritualistic work is not exempt from taxation."

Again, in the case of *The People ex rel. Nelson v. The Rockford Masonic Temple Building Association*, 348 Ill. 567 (1932), the Illinois Supreme Court considered a case involving facts similar to the case here in issue. In that case, at page 569, the Supreme Court concluded that Masonic lodges and related organizations are organized for the following primary purposes:

"...to promulgate the ideals of Masonry, which include the maintenance of a high moral standard of living and administration to the religious and spiritual life of its members. In carrying out these ideals charity is but an incidental feature. It is not the principal or the exclusive object of the organization and under the constitution of the State no exemption from taxation can be enjoyed by an organization which does not have charity as its primary object."

The case of *Cook County Masonic Temple Association et al., v. The Department of Revenue*, 104 Ill.App.3d 658 (1st Dist. 1982), is distinguishable from the case here in issue, because in that case the Department and the Masonic Temple Association agreed that the numerous Temple associations were charitable organizations. The Appellate Court then concluded that the temple buildings were used for charitable purposes. In this case, I have previously found, as a matter of fact, that the blue lodges and appendant bodies are not primarily charitable organizations, and also that Applicant, is not primarily a charitable organization. I have further found that the building here in issue was not used for primarily charitable purposes during 1992.

In the case of *Morton Temple Association, Inc. v. Department of Revenue*, 158 Ill.App.3d 794 (3rd Dist. 1987), the Appellate Court held that

a Masonic Temple Association did not qualify for exemption, even though its charter stated that it was organized for charitable purposes, where it did not make any contributions to charitable projects and the property was used primarily for the benefit of the members of the Masonic lodges and chapters of the Order of the Eastern Star, which occupied it.

In the recent case of Pontiac Lodge No. 294 A.F. & A.M. v. The Illinois Department of Revenue, 243 Ill.App.3d 186 (4th Dist. 1993), the Appellate Court held that a Masonic lodge which owned a building which was used for one charitable function annually, and otherwise was used by the lodge and related Masonic organizations, the lodge contributing 12% of its total disbursements to charity, was not using its property for primarily charitable purposes, and consequently, did not qualify for exemption. In that case, the related Masonic organizations using the building included the Order of the Eastern Star, the Royal Arch Masons, the Commandery, and the Order of DeMolay.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. Based on the foregoing finding of facts, I conclude that at best, the Applicant only met guideline (2) of the foregoing six guidelines.

It should also be noted that the Illinois Courts have consistently

held that the use of property to produce income, is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial, whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

Based on the foregoing findings of fact, constitutional provisions, statutory provisions, Illinois Supreme Court cases, and Illinois Appellate Court cases, I conclude that although the Applicant owned this parcel, it was not organized primarily for charitable purposes. I further conclude that the Applicant did not use this parcel and the building and parking lot located thereon, primarily for charitable purposes during 1992. Consequently, said parcel did not qualify for exemption during the 1992 assessment year.

I therefore recommend that Macon County parcel 04-12-15-235-006 remain on the tax rolls for the 1992 assessment year, and be assessed to the Decatur Masonic Temple Association, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

July , 1995